

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIE BARNES and MARTICA WILSON,

Plaintiffs-Appellees,

v

USAA CASUALTY INSURANCE COMPANY,

Defendant,

and

MARY SHROSBREE,

Defendant-Appellant.

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UNPUBLISHED

October 21, 2014

No. 316729

Oakland Circuit Court

LC No. 2012-128177-NI

Before: HOEKSTRA, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying her motion for summary disposition pursuant to MCR 2.116(C)(7). For the reasons stated in this opinion, we reverse the trial court's order and remand for entry of an order granting defendant's motion for summary disposition.

The basic facts are undisputed. Plaintiffs were in an automobile accident on July 17, 2009. Plaintiff Martica Wilson was driving a car in which plaintiff Willie Barnes was a passenger. A car, allegedly driven by defendant Mary Shrosbree (hereinafter referred to as defendant) turned into Wilson's lane of travel. Wilson swerved and crashed. Defendant USAA Casualty Insurance Company (USAA)<sup>1</sup> insured Wilson's vehicle. On July 17, 2012, exactly three years later, plaintiffs filed suit against USAA seeking underinsured/uninsured motorist benefits. USAA filed its first responsive pleading on September 20, 2012. On January 11, 2013, USAA filed a notice of nonparty fault identifying defendant as a nonparty who may have been responsible for plaintiffs' injuries in whole or in part. USAA filed its notice of nonparty fault

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<sup>1</sup> USAA is not a party to this appeal. In addition, in the trial court, plaintiff and USAA stipulated to an order dismissing USAA from the claim.

113 days after USAA filed its responsive pleading. On January 16, 2013, just six days after USAA filed its notice of nonparty fault, plaintiffs filed an amended complaint bringing a claim against defendant. On March 4, 2013, defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that the statute of limitations had expired and barred plaintiffs' claim. Plaintiffs argued that because they amended their complaint pursuant to MCR 2.112(K)(4), the date of their amended complaint related back to the date of their original complaint as provided in MCL 600.2957(2). The trial court agreed with plaintiffs and denied defendant's motion for summary disposition. Defendant now appeals.

Defendant argues that the trial court erred in denying her motion for summary disposition because the statute of limitations barred plaintiffs' claim. We agree. This Court reviews de novo the trial court's denial of a defendant's motion for summary disposition and the interpretation of court rules and statutes. *Ligons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011). "We interpret court rules using the same principles that govern the interpretation of statutes." *Id*. When reviewing a statute or court rule, our goal is to "give effect to the plain meaning of the text." *Id*. "If the text is unambiguous, we apply the language as written without construction or interpretation." *Id*.

Defendant alleges that plaintiffs' claim is barred by the statute of limitations because plaintiffs' amended complaint was filed more than three years after the car accident. Plaintiff relies on MCL 600.2957(2), which would allow plaintiffs, after identification of a nonparty at fault, to move to amend their complaint to include the nonparty. The amended complaint would relate back to the originally filed complaint, thus extending the statute of limitations. MCL 600.2957(2) provides:

Upon motion of a party within 91 days after identification of a nonparty, the court shall grant leave to the moving party to file and serve an amended pleading alleging 1 or more causes of action against that nonparty. A cause of action added under this subsection is not barred by a period of limitation unless the cause of action would have been barred by a period of limitation at the time of the filing of the original action.

MCR 2.112(K) is a rule of procedure, which was intended to implement MCL 600.2957. *Bint v Doe*, 274 Mich App 232, 234; 732 NW2d 156 (2007). "The purposes of the court rule are to provide notice that liability will be apportioned, provide notice of nonparties subject to allocated liability, and allow an amendment to add parties, thereby promoting judicial efficiency by having all liability issues decided in a single proceeding." *Id*. In order to take advantage of MCL 600.2957(2), a party must first comply with MCR 2.112(K). *Staff v Johnson*, 242 Mich App 521, 533-534; 619 NW2d 57 (2000).

MCR 2.112(K)(3)(c) requires that a notice of nonparty fault must be filed within 91 days after a defendant files its first responsive pleading. The court rule states:

On motion, the court shall allow a later filing of the notice on a showing that the facts on which the notice is based were not and could not with reasonable diligence have been known to the moving party earlier, provided that the late

filing of the notice does not result in unfair prejudice to the opposing party. [MCR 2.112(K)(3)(c).]

In addition, MCR 2.112(K)(4) provides that “[a] party served with a notice under this subrule may file an amended pleading stating a claim or claims against the nonparty within 91 days of service of the first notice identifying that nonparty.” In other words, an amended complaint may be filed within 91 days.

The trial court erred in granting defendant’s motion for summary disposition because plaintiffs and USAA failed to follow the requirements of MCL 600.2957(2) and MCR 2.112(K). First, USAA failed to comply with MCR 2.112(K). USAA filed its first responsive pleading on September 20, 2012. On January 11, 2013, it filed its notice of nonparty fault. Because the notice of nonparty fault was filed 113 days after its first responsive pleading, it was untimely. MCL 2.112(K)(3)(c). As such, USAA was required to file a motion seeking permission to allow a later filing of the notice and show “that the facts on which the notice is based were not and could not with reasonable diligence have been known to [it] earlier.” MCR 2.112(K)(3)(c). Further, before granting leave, the trial court also had to find that the “late filing of the notice does not result in unfair prejudice to the opposing party,” i.e. plaintiffs. MCR 2.112(K)(3)(c). However, USAA did not file a motion with the court to allow a later filing of a notice of nonparty fault.

Plaintiffs argue that they did not have an affirmative responsibility to object to USAA’s procedural deficiency. However, where a defendant failed to comply with the notice requirements of MCR 2.112(K), this Court has found that a plaintiff cannot rely on MCL 600.2957(2) to file an amended pleading to add a nonparty at fault after expiration of the limitations period. *Staff*, 242 Mich App at 530-536.<sup>2</sup> The holding in *Staff* controls in this case,

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<sup>2</sup> The *Bint* Court summarized the holding in *Staff*:

In *Staff*, this Court found a conflict between MCL 600.2957(2) and MCR 2.112(K)(4) because the statute provides that the trial court *shall* grant leave to file an amended pleading and the court rule provides that a party *may* file an amended pleading. This Court also noted that the statute does not place any time restrictions on the filing of a motion to add a nonparty, while the court rule employs a reasonable time frame and contains an unfair-prejudice provision. Because statutes of limitations involve matters of procedure, this Court resolved the conflict in favor of the court rule and concluded that the statute of limitations applied because the parties had purposely failed to comply with the notice provisions of the court rule. [*Bint*, 274 Mich App at 234-235 (internal citations omitted) (emphasis in original).]

As noted, that *Staff* Court ultimately held that a parties’ failure to follow the notice requirements of MCR 2.112(K) prevented application of MCL 600.2957(2). *Staff*, 242 Mich App at 533-534.

and USAA's failure to follow the requirements of MCR 2.112(K) prevent the application of MCL 600.2957(2).<sup>3</sup>

Second, plaintiffs failed to file a motion to amend their complaint as required by MCL 600.2957(2). The plain language of the statute requires that plaintiffs file a motion to amend. Because the language of the statute is unambiguous, we must apply the language as written and without construction or interpretation. *Ligons*, 490 Mich at 70. We reject plaintiffs' assertion that because MCR 2.112(K)(4) does not require a motion to amend the complaint, plaintiffs were not required to file a motion. Absence of the requirement for a motion under MCR 2.112(K)(4) does not nullify the requirement as stated in MCL 600.2957(2) or create a conflict between the statutes, as plaintiff suggests.<sup>4</sup> Pursuant to MCL 600.2957(2), plaintiffs needed to file a motion to amend their complaint. Because they did not, plaintiffs are unable to rely on MCL 600.2957(2) to extend the statute of limitations.

In summary, we hold that the trial court erred in denying defendant's motion for summary disposition because (1) USAA failed to file a motion to enter its untimely notice of nonparty fault pursuant to MCR 2.112(K)(3)(c), and plaintiffs failed to object and (2) plaintiffs did not file a motion to amend their complaint to add defendant as required by MCL 600.2957(2).<sup>5</sup>

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<sup>3</sup> We reject plaintiffs' assertion that this Court should apply the holding in *Bint*, 274 Mich App at 233. While plaintiff suggests that *Bint* overruled *Staff* when it found that MCL 600.2957 and MCR 2.112(K) did not conflict, a review of the holdings revealed that the *Bint* Court distinguished its holding from *Staff*. *Id.* at 234-235. Similarly, the current case is distinguishable from *Bint*, because in *Bint*, the parties complied with the notice provisions of MCR 2.112(K), while the parties in this case, and in *Staff*, did not.

<sup>4</sup> We do not agree with plaintiffs that the *Staff* holding that MCR 2.112(K) and MCL 600.2957(2) conflict extends to the responsibility of the plaintiff to file a motion to amend to add a nonparty at fault. The *Staff* Court held that the conflict related to the responsibilities of the parties when filing notice of nonparty fault and subsequent amendments. *Staff*, 242 Mich App at 531-536. The *Staff* Court did not find that a plaintiff did not need to file a motion to amend a complaint to add a nonparty and specifically referenced the requirement that the plaintiff file a motion to amend ("[MCL 600.2957(2)] fails to place any time restrictions on the filing of the motion to add a nonparty." *Id.* at 531. "The construction of MCL 600.2957 . . . urged by plaintiff would require the trial court add a party by motion alone . . ." *Id.* at 533.).

<sup>5</sup> We do not agree with defendant that MCR 2.118(A) required plaintiff to file a motion to amend the complaint because it was filed more than 14 days after plaintiffs were served with USAA's responsive pleading. MCR 2.112(K)(4) provides that "[t]he court may permit later amendment as provided in MCR 2.118." Here, plaintiffs were not untimely in filing their amended complaint, and, thus, MCR 2.118(A) does not apply.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendant, the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Karen M. Fort Hood